IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 802 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THORI MUBARAK DUDH UTPADAK SAHKARI MANDALI LIMITED AND ANOTHER

Versus

STATE OF GUJARAT AND OTHERS

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Appearance :
Shri ND Nanavati, Senior Advocate with Shri Harin P Raval for the petitioners.
Ms Phalguni Patel, AGP for Respondent Nos. 1 - 3.
UNSERVED-REFUSED (R) for Respondent(s) : 4,
Shri PM Thakkar, Senior Advocate for Shri Pushpadatta Vyas for Respondent No.4,

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 13/10/2005

ORAL JUDGMENT

1. Petitioners are seeking a writ of quo-warranto and

all challenging the authority of respondent No.4, who is elected as a Chairman and Member of Board of Directors of the Ahmedabad District Cooperative Milk Producers Union Limited (popularly known as “Uttam Dairy”), for holding such post and for continuation on the post.

2. Shri N.D.Nanavati, learned Senior Advocate appearing for the petitioners submitted that as per the bye-law approved by the Registrar of Cooperative Societies, more particularly as per bye-law No.20.2.8, which is amended with effect from September, 1995 the respondent No.4 is not eligible to become a Chairman of the Uttam Dairy. It is contended by Shri N.D.Nanavati, learned Senior Advocate appearing for the petitioners that the respondent No.4 was elected on 7th of August, 2003. The bye-laws of the Uttam Dairy were amended by the Cooperative Society and the same were sent to the Registrar under Section 13 of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as “the Act, 1961”), for registration of such amendment. Initially, it was approved by the Registrar on 2nd September, 1995 but on preferring an appeal before the State Government, the order passed by the Registrar approving the amendment in bye-laws was quashed and the matter was remanded to the Registrar for fresh decision. The order passed by the

Government in revision under Section 155 of the Act, 1961 is dated 12th June, 2003. The Registrar, upon remand of the matter vide order dated 30th January, 2004, refused the amendment in bye-law of Uttam Dairy under Section 13 of the Act. The said order was carried in appeal, before the Government, by the respondents and the Government quashed and set aside the order passed by the Registrar and approved the bye-law vide order dated 13th April, 2004. Thus, it is contended on behalf of the petitioners that the Government has approved bye-law vide order dated 13th April, 2004 but the said amendment in bye-law will come into effect from September 1995 and, therefore, election of respondent No.4, as a Chairman of Uttam Dairy in the month of August 2003 is dehors the provisions of bye-law, especially bye-law No.20.2.8 and, therefore, he is not eligible for the said post. It is also contended by the learned counsel appearing for the petitioners that the respondent No.4 is not a resident of Village-Rakhial but looking to the several documents which are placed on record of this case, that respondent No.4 is a voter and a resident of village Aajammukhi. Similarly, name of respondent No.4 is reflected in the voter's list of Village-Rupavati, District – Sanand. Several documents have been referred by the petitioners for fortifying this fact. Even affidavits of the villagers have been referred

in the arguments to raise a factual contention that there is a breach of bye-law No.20.2.8 of Uttam Dairy. It is also contended by the learned counsel appearing for the petitioners that the respondent No.4 has stated to be a member of Rakhial Dudh Utpadak Mandali but, in fact, the respondent No.4 is not residing in the said village nor is having any cows or buffaloes, nor he is depositing milk with the said Rakhial Dudh Utpadak Mandali, therefore, as per bye-law 20.2.8, the respondent No.4 is not eligible for becoming Chairman of the Ahmedabad District Cooperative Milk Producers Union Limited (Uttam Dairy). It is also contended by the learned counsel appearing for the petitioners that as per bye-law No.19.5 of the Society, if any Member violates bye-law No.20 of the society, his membership from the Board of Directors will be automatically deemed to have been discontinued. In view of the amended bye-law No.20.2.8 even if respondent No.4 is appointed legally, he is not entitled to continue unauthorizedly and thus continuation of respondent No.4 as Chairman of the society is illegal and dehors the provisions of bye-law approved by the Registrar of Cooperative Societies. The learned counsel for the petitioners has relied upon the following decisions.

(i) AIR 1965 SC 491

(ii) (1993) 2 SCC 703.

3. I have heard Shri P.M.Thakkar, Senior Advocate appearing for the respondent No.4. He mainly submitted that there is no illegality in the appointment of respondent No.4 as a Chairman of the Ahmedabad District Cooperative Milk Producers Union Limited nor there is any illegality in continuation of the respondent No.4 as a chairman thereof. There is no disqualification or ineligibility attached with respondent No.4 for becoming Chairman of the said cooperative society. The respondent No.4 was elected in the month of August, 2003 as a chairman of the society and on that date amended bye-law No.20.2.8 was never registered by the Registrar as per provisions of Section 13 of the Act, 1961. On the date of election of respondent No.4, he was eligible and qualified for contesting the election of chairman of society. Initially similar objections, were raised, by the petitioners before the declaration of result of the election, even a petition was preferred, before this Court, bearing Special Civil Application No.10066/2003, which was rejected by the Division Bench of this Court vide order dated 29th July, 2003 and it was observed that the respondents (petitioners of Special Civil Application

No.10066/2003) can prefer an Election Petition and, therefore, the petition was dismissed. Thus, a writ of quo-warranto may not be issued against the respondent No.4 and Election Petition can be filed by the petitioners under Section 145-U of the Act, 1961. It is also contended by Senior Advocate appearing for respondent No.4 that the State of Gujarat in exercise of powers under Section 155 of the Act, 1961 had quashed the order passed by the Registrar by partly allowing the revision application vide order dated 12th June, 2003. Thereafter, Registrar decided the matter afresh under Section 13 of the Act but amendment in the bye-laws was refused vide order dated 30th January, 2004. This order was challenged in revision before the State Government by the present petitioners. There revision application was allowed on 13th April, 2004. Thus, the amendment in the bye-law 20.2.8 has came into effect on and from 13th April, 2004. The respondent No.4 has been elected in the month of August 2003, thus the newly added disqualification by way of amendment in the bye-law No.20.2.8 is not applicable to respondent No.4 and therefore, petition may not be entertained by this Court. It is also contended by the respondent No.4 that he is residing at village-Rakhial. He has also taken this Court to several certificates issued by the Rakhial Doodh

Utpadak Sahkari Mandali Limited to the effect that the respondent No.4 is residing at village-Rakhial since long and he is also depositing milk with the Rakhial Cooperative Society. These documents are at Annexure-V with the additional affidavit filed by respondent No.4. Respondent No.4 has also referred to several affidavits of the villagers of village-Rakhial to the effect that respondent No.4 is residing at village-Rakhial since long. Thus, there is no breach of bye-law No.20.2.8, even if it is made applicable to the respondent No.4. Thus, it is seriously disputed by respondent No.4, factually, that the respondent No.4 is not residing at Village-Rakhial. It is also contended by respondent No.4 that in the whole memo of petition nowhere it is referred that respondent No.4 was ineligible for becoming a primary member of Rakhial Cooperative Society. As per Section 23 of the Act, 1961 respondent No.4 ought to be removed from the membership, this contention has been raised only by way of oral arguments but not referred in the memo of petition at all. Similarly, the contention raised by the petitioner for taking action under Section 76-B of the Act, 1961 is also dehors the facts of the case and it is vehemently submitted by respondent No.4 that the words “disqualification” and “ineligibility” are two different and distinct words. Respondent No.4 has not committed any

act whereby the powers under Section 76-B of the Act, 1961 may be invoked by the Registrar of the Cooperative Societies. Respondent No.4 is not negligent in performing his duties and no disqualification referred to in the Act is possessed by respondent No.4. As per Section 11 of the Act, 1961 powers are vested with the Registrar to check the residential address of respondent No.4 and to verify whether respondent No.4 is residing in the given town or not. There is no application under Section 23 of the Act, 1961 given by the petitioners. Similarly there is no application by petitioners under Section 11. Neither notice nor hearing has ever taken place at the behest of the Registrar nor any order has been passed by the Registrar that the respondent No.4 is not an ordinary resident of village-Rakhial. The learned counsel appearing for respondent No.4 has also relied upon the judgement in **Bhairulal Chunilal V. State of Bombay,** reported in AIR 1954 BOMBAY 116. Therefore disputed questions of fact, as to residence of respondent No.4 may not be decided by this Court, in exercise of extra-ordinary, jurisdiction under Article 226 of the Constitution of India.

4. In view of the facts and circumstances of the case and having heard the counsels for both sides at length, I

see no reason to entertain the present petition, especially for the following facts and reasons :

(I) As per Section 13 of the Act, 1961 the amendment in the bye-laws of the society, ought to be registered by the Registrar. Unless it is registered the same shall not be valid. Section 13 of the Act, 1961 reads as under :

> “13. Amendments of bye-laws of societies :-
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> 1. No amendment of the bye-laws of a society shall be valid until registered under this Act. For the purpose of registration of an amendment of the bye-laws, a copy of the amendment passed, in the manner prescribed, at a general meeting of the society, shall be forwarded to the Registrar.
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> 2. If the Registrar is satisfied that the amendment so forwarded is not contrary to this Act or the rules, he may register the amendment:
>
> Provided that no order refusing to register the amendment shall be passed except after giving the society an opportunity of being heard.

> 3. When the Registrar registers an amendment of the bye-laws of a society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of its registration.
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> 4. Where the Registrar refuses to register an amendment of the bye-laws of a society, he shall communicate the order of refusal, together with his reasons thereof, to the society."
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> (Emphasis supplied)

The amendment was resolved by the Ahmedabad District Cooperative Milk Producers Union Limited to be incorporated in their bye-law and was sent to Registrar under Section 13 of the Act for its registration. The Registrar approved the amendment in bye-laws on 2nd September, 1995. Thereafter, revision application was preferred against order of Registrar under Section 155 of the Act and the said revision was partly allowed and the order passed by the Registrar dated 2-9-1995 was quashed and set aside and the matter was remanded for taking afresh

decision. Revisional order was passed by the Government vide order dated 12th June, 2003 in Revision Application No.82/2003 (Annexure-I to the additional-affidavit-in-reply filed by respondent No.4). Thus, the Registrar was directed to take afresh decision under Section 13 of the Act, 1961 for grant or refusal of bye-laws. The Registrar, after hearing the parties at length, refused the amendment of bye-law No.20.2.8 vide order dated 30th January, 2004 (Annexure-II to the additional-affidavit-in-reply filed by the respondent No.4). Thereafter, this order dated 30th January, 2004 was challenged before the State of Gujarat and the order dated 30th January, 2004 was quashed and set aside by Deputy Secretary (Appeals) by order dated 13th April, 2004. Thus, amendment in bye-law 20.2.8 was allowed by the State Government in Revision Application No.14/2004 under Section 155 of the Act (Annexure-II to the additional-affidavit-in-reply filed by respondent No.4). Thus, when respondent No.4 was elected as a Chairman of the Ahmedabad District Cooperative Milk Producers Union Limited bye-law No.20.2.8 was not operative. The disqualification cannot be added upon already elected members with retrospective effect. Looking to the facts of the

present case, with effect from 13th April, 2004 whereby the Government has allowed Revision Application, amended bye-law No.20.2.8 becomes operative for the persons, who are claiming to become in future, the Chairman of the Ahmedabad District Cooperative Milk Producers Union Limited. The approval granted as per Section 13 of the Act can be made effective only with effect from 13th April, 2004 for the subsequent prospective candidates for the election of Chairman of the society.

Retrospective effect of disqualification cannot be given to any person, who is already been elected as a Chairman of the Cooperative Society, therefore, writ of quo-warranto cannot be issued against respondent No.4 as he was qualified for holding the post of Chairman of the Ahmedabad District Cooperative Milk Producers Union Limited (Uttam Dairy).

(II) It is also contended by the learned counsel appearing for the petitioners that looking to the bye-law No.19.5 of the Society, respondent No.4 cannot be continued on the post of Chairman. This

contention is also not accepted by this Court, mainly for the reason that the disqualification is amended subsequently to the election of respondent No.4 as a Chairman of the Society, while bye-law No.19.5 presupposes an act or omission on the part of respondent No.4 so that it can be said that respondent No.4 has committed breach of bye-law No.20. In the facts of the present case, no such act has ever been committed by respondent No.4 as envisaged in bye-law No.19.5. Shifting from one village to another is alleged by the petitioners on the basis of some documents, and it is highly disputed by respondent No.4 similarly with the help of documents and affidavits of villagers. This Court is not going to decide these disputed questions of fact, especially when no such application has ever been preferred by the petitioners under Section 11 to be read with Section 23 of the Act, 1961. Such decision ought to have been taken, first by, the Registrar. There must be opportunity of being heard to respondent No.4 before the Registrar. There must be an order of the Registrar as to the ordinary residence of respondent No.4 and respondent No.4 has all rights of appeal and revision applications. All these provisions of law cannot be by-passed. The

fact that where the respondent No.4 is residing can be established by taking evidence before appropriate authority under the Act, 1961.

(III) It is also contended by the learned counsel appearing for the petitioners that under Section 76-B of the Act, 1961 the Registrar has to initiate proceedings for removal of respondent No.4. It is also contended by the learned counsel appearing for the petitioners that previously the petitions were preferred and the Registrar was directed to take a decision upon the application preferred by the petitioners in initiating actions under Section 76-B of the Act, 1961. The decision taken by the District Registrar dated 25th August, 2005 whereby the application of the present petitioners has been rejected. Looking to the facts and circumstances of the case, the order passed by the District Registrar dated 25th August, 2005 is true, legal and correct and is in consonance with facts of the case. The election of respondent No.4 as a Chairman was not violative of bye-laws of the cooperative society. Much emphasized point raised by the petitioners is the amended version of bye-laws. As stated herein above, initial order of September 1995 of the

Registrar was quashed by the State Government on 12th June, 2003 and matter was remanded to Registrar and fresh decision was taken by the Registrar refusing the amendment in bye-laws vide order dated 30th January, 2004. Thereafter Registrar refused the amendment in bye-law. This order was challenged in Revision, and in a revision application, the State Government again quashed the order passed by the Registrar dated 30th January, 2004 and held that amended bye-law 20.2.8 ought to be registered by the Registrar. This order was passed by the State Government on 13th April, 2004. Thus, as on date of election of respondent No.4 i.e. in the month of August 2003, amended bye-law 20.2.8 was not in force, which adds the disqualification upon a candidate of the Chairmanship of the Cooperative Society. For initiating actions under Section 76-B of the Act. There must be a persistent default or there must be negligence in performance of the duties or there must be any act on the part of the respondent No.4, which is prejudicial to the interest of the society. Neither, of these facts, have ever been alleged by the petitioners in the memo of the petition. Already earlier petition being Special Civil Application No.10066/2003 was

preferred against respondent No.4 and it was rejected vide order dated 29th July, 2003 directing the petitioners to prefer Election Petition. Thus, in view of these facts, earlier Special Civil Application being rejected and subsequently amended bye-law, are sufficient enough to hold the order passed by the Registrar dated 25th August, 2005 as true, correct, legal and in consonance with law and, therefore, prayer as prayed for in paragraph 25 (E) cannot be granted to the petitioners.

(IV) Now, once when it is held that the amended disqualification is not applicable to already elected member in the Board of Directors of the Cooperative Society and when no application under Section 11 or under Section 23 of the Act, 1961 has been preferred against respondent no.4 - and when there is no positive act or inaction on the part of the respondent No.4 so as to warrant the applicability of Section 76-B, the only option left out with he petitioner is to take recourse under Section 145-U of the Act. Learned counsel for the respondent No.4 submitted that when Election Petition can be preferred a writ of quo-warranto ought not to be issued and reliance is placed on a

case decided by Bombay High Court in after relying upon decision in **Bhairulal Chunilal V. State of Bombay,** reported in AIR 1954 BOMBAY 116. Looking to the facts of the present case and the order passed by this Court in Special Civil Application No.10066/2003, on 29th July, 2003 and when there is no positive act or inaction or omission to do an act on the part of respondent No.4 in getting disqualified, as per the Act or as per the bye-laws of the society, the petitioners could have availed remedy available under Section 145-U of the Act, 1961. The Division Bench of this Court had allowed petitioners to prefer election petition. Apart from this aspect of the matter, suffice it to say that a writ of quo-warranto cannot be issued against respondent No.4 as on the date of election respondent No.4 was fully qualified and eligible as per the bye-laws of the society for becoming Chairman of the society. Subsequent amendment in bye-law, cannot, disqualify the existing members, of Board of Directors, of the cooperative society. Even their continuation cannot be held as bad because of amended bye-laws or because of added disqualification for becoming chairman of the society. So far as residence of the respondent No.4

is concerned, no such application is preferred under Section 11 nor it has been preferred, under Section 23 of the Act, 1961, by the petitioners. Both sides are relying upon several documents and affidavits of the villagers. This is a highly disputed question of fact and when such application is preferred, it can be decided by the Registrar, under the Act, 1961.

As a cumulative effect of the aforesaid facts and reasons, the petition fail and is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

(D.N.PATEL, J.)

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